

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. 19-
)
SHAWN SHAPIRO, D.C., and)
PORT CITY CHIROPRACTIC, P.L.L.C.,)
)
Defendants.)
)

COMPLAINT

1. The United States of America brings this action on behalf of the United States Department of Health and Human Services (“HHS”), an agency of the United States, seeking recovery of monies wrongfully paid to, and for civil penalties against, the defendants, Shawn Shapiro, D.C. and Port City Chiropractic, PLLC, under the False Claims Act (“FCA”), 31 U.S.C. §§ 3729-3733, and for Conversion, Unjust Enrichment, and Payment by Mistake, based upon claims made to the United States in order to obtain payments from the Medicare Program for services that were not properly documented between approximately 2010 and 2014.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is founded upon 28 U.S.C. §§ 1345 and 1335, and 31 U.S.C. § 3730.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(b) and 31 U.S.C. § 3732(a).

PARTIES

4. The United States is the plaintiff in this action on behalf of HHS. HHS is an agency and instrumentality of the United States and its activities, operations and contracts are paid from federal funds. HHS administers the Health Insurance Program for the Aged and Disabled established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 *et seq.* (“Medicare”).

5. Defendant Shapiro is a resident of Portsmouth, New Hampshire and is subject to the jurisdiction of this Court. At all times material to this civil action, Shapiro was a licensed chiropractor practicing in New Hampshire, who participated in the Medicare program in New Hampshire. Shapiro is the principal owner of Port City Chiropractic, PLLC, (“PCC”) a professional limited liability company organized under the laws of New Hampshire.

OPERATION OF THE MEDICARE PROGRAM

6. Medicare is a federal health insurance program for people aged 65 and older as well as persons under 65 who are blind or disabled. The Medicare program is administered by the Centers for Medicare & Medicaid Services (“CMS”), an agency of HHS.

7. There is a voluntary Supplemental Insurance Benefit under Medicare known as Part B. Part B pays for outpatient expenses of physicians, therapists, laboratories and services, including podiatrists. Medicare beneficiaries pay a monthly premium for Medicare Part B and are subject to a 20 percent coinsurance and annual deductible.

8. CMS contracts with private insurance organizations, referred to as carriers under Part B, to receive, adjudicate, and pay Medicare claims submitted by approved and participating health care providers. These carriers are required to administer the Medicare program according

to the regulations established by CMS. Funds for reimbursing Medicare Part B claims come from the Medicare Trust Fund and are federal funds.

9. Claims for Part B covered services must be submitted by a provider or supplier to the appropriate regional carrier based upon the beneficiary's state of residence. CMS has contracted with National Government Services ("NGS") to be the carrier that handles Medicare Part B claims in New Hampshire.

10. CMS is required by law to provide a unique identification number for each provider who provides or prescribes services for which payment is made by Medicare. Claims billed to Medicare for any service or item must show the name and provider number for the rendering provider. By becoming a participant provider in Medicare, enrolled providers agree to abide by the rules, regulations, policies and procedures governing reimbursement, and to keep and allow access to records and information as required by Medicare. In order to receive Medicare funds, enrolled providers, together with authorized agents, employees, and contractors are required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures issued by the Part B carrier.

11. To obtain payment, Medicare providers are required to submit claims for payment to Medicare carriers. Medicare providers are required to provide certain information on claims, including, but not limited to, the provider's name and Medicare provider number, the name of the beneficiary for whom the service was provided, the beneficiary's Medicare number, the date the service was performed, and a description of the illness or injury that made the service medically necessary. The medical services provided are to be identified by the use of codes, which are numeric descriptions of the services for which payment is sought by the provider. The

codes are assigned by the American Medical Association and designated as Current Procedural Terminology (“CPT”) codes. The claims can be submitted electronically or in paper format.

12. The CPT codes reported must be supported by documentation in the medical record of the corresponding patient. Such records must be retained for seven years. Any payment made for a service not substantiated by sufficient documentation is considered an overpayment and must be refunded to the Medicare program.

13. Medicare covered chiropractic services include manual manipulation of the spine if medically necessary to correct a subluxation when provided by a chiropractor or other qualified provider. The providers must maintain accurate records to reflect the medical necessity of any services provided in order to be eligible for payment from Medicare.

THE DEFENDANTS' CONDUCT

14. From about January 1, 2010 to May 31, 2014, defendants Shapiro and PCC submitted claims seeking Medicare payments. On multiple occasions defendants submitted claims, and caused claims to be submitted, to Medicare for services despite having insufficient medical records documenting that these services were medically necessary. Because defendants lacked records to document that these services were medically necessary, they were not entitled to receive payments for these services.

COUNT ONE – FALSE CLAIMS ACT

15. The allegations of paragraphs 1 through 14 are realleged and incorporated by reference.

16. From about January 1, 2010, through about May 31, 2014, in the District of New Hampshire, Shapiro and PCC (1) knowingly presented, or caused to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval

or (2) knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government.

17. The claims for payments from Medicare were false or fraudulent because (1) Shapiro and PCC lacked sufficient documentation to support the claims that were submitted to Medicare. and (2) those claims did not accurately reflect the information contained in Shapiro's patient files. Absent the false statements made by and caused by Shapiro and PCC, the Medicare program would not have made payments to Shapiro and PCC for these services, or would have made lesser payments, as set forth in paragraphs 1 through 14.

18. In reliance upon the false and misleading information and representations contained in those claims, the United States made payments to Shapiro and PCC, in violation of the provisions of 31 U.S.C. §§ 3729-3733.

19. As used in paragraph 16, the word "knowingly" means that a person, with respect to information, (a) has actual knowledge of the information, (b) acts in deliberate ignorance of the truth or falsity of the information, or (c) acts in reckless disregard of the truth or falsity of the information.

20. For each violation of the FCA, the United States is entitled to recover treble damages from defendants Shapiro and PCC, being three times the amount paid by the United States for those false claims. See 31 U.S.C. § 3729(a).

21. In addition, for each violation of the FCA, the United States is entitled to recover from the defendants a civil monetary penalty of not less than \$5,500.00 and not more than \$11,000.00 per false claim or statement. Id.; 64 Fed. Reg. 47099, 47103 (1999).

COUNT TWO – CONVERSION

22. The allegations of paragraphs 1 through 14 are realleged and incorporated by reference.

23. All payments made by the Medicare program to the defendants that are described in paragraphs 1 through 14 are the lawful property of the United States.

24. The defendants have knowingly converted these funds for their own uses all in derogation of the rights of the United States, which is entitled to these funds.

25. As a result of this conversion by the defendants, the United States has been damaged in the amount of the payments the defendants have wrongfully received and withheld from the United States.

COUNT THREE – UNJUST ENRICHMENT

26. The allegations of paragraphs 1 through 14 are realleged and incorporated by reference.

27. The United States, through the Medicare program, paid funds to the defendants based upon false representations of facts. If the defendants had truthfully disclosed that (1) Shapiro and PCC lacked sufficient documentation to support the claims that were submitted to Medicare and (2) those claims did not accurately reflect the information contained in Shapiro's patient files, the defendants would not have been entitled to receive the Medicare payments described in paragraphs 1 through 14. As a result, the defendants received payments from the Medicare program to which they were not entitled.

28. The defendants have been unjustly enriched by retaining the use and enjoyment of the monies paid to them by the Medicare program as a result of their misrepresentations that suggested that they were entitled to receive certain Medicare payments.

29. The defendants have been unjustly enriched in the amount of the Medicare payments made to the defendants, which they converted to their own use and benefit.

COUNT FOUR – PAYMENT BY MISTAKE

30. The allegations of paragraphs 1 through 14 are realleged and incorporated by reference.

31. The United States, through the Medicare program, made payments to the defendants based upon the belief that they were properly entitled to receive these payments. This belief was based upon representations made by the defendants that suggested that they were entitled to receive those payments.

32. This belief was mistaken and erroneous because the defendants in fact were not entitled to receive payments from the Medicare program for the services described in paragraphs 1 through 14.

33. This mistakenly and erroneously formed belief was material to the Medicare program's decision to make payments to the defendants. The Medicare program would not have made payments to the defendants had it been aware of all of the facts.

THEREFORE, the plaintiff United States of America respectfully requests this Court to:

A. Enter judgment for the plaintiff and against the defendants on each of Counts One, Two, Three and Four of this Complaint, as follows:

- (i) Count One – An amount equal to three times the loss sustained by the United States, plus \$11,000.00 per false claim or representation, as provided in 31 U.S.C. § 3729(a);
- (ii) Count Two – Conversion damages, plus interest;
- (iii) Count Three – Unjust Enrichment damages, plus interest;

- (iv) Count Four – Payment by Mistake damages, plus interest;
- B. Award the United States its costs in this action; and
- C. Grant such other and further relief as is just and proper.

Respectfully submitted,

SCOTT W. MURRAY
United States Attorney

By: /s/ Michael McCormack
Michael McCormack
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Dated: March 27, 2019

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (*Firm Name, Address, and Telephone Number*) _____

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.

Attorneys (*If Known*) _____

II. BASIS OF JURISDICTION (*Place an "X" in One Box Only*)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>

III. CITIZENSHIP OF PRINCIPAL PARTIES (*Place an "X" in One Box for Plaintiff and One Box for Defendant*)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (*Place an "X" in One Box Only*)

[Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 350 Motor Vehicle	PERSONAL PROPERTY		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 485 Telephone Consumer Protection Act	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (*Place an "X" in One Box Only*)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (<i>specify</i>)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*): _____

VI. CAUSE OF ACTION

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): _____

JUDGE _____

DOCKET NUMBER _____

DATE _____

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
for the

_____ District of _____

Plaintiff(s)

v.

Civil Action No.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) _____
was received by me on (*date*) _____.

I personally served the summons on the individual at (*place*) _____
on (*date*) _____; or

I left the summons at the individual's residence or usual place of abode with (*name*) _____,
_____, a person of suitable age and discretion who resides there,
on (*date*) _____, and mailed a copy to the individual's last known address; or

I served the summons on (*name of individual*) _____, who is
designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____; or

I returned the summons unexecuted because _____; or

Other (*specify*): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: